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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/524,002

10/11/2005

Stephane Demellier

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9481

27885

7590

03/05/2009

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EXAMINER

GUMBS, KEEGAN ROSS

ART UNIT

PAPER NUMBER

4128

MAIL DATE

DELIVERY MODE

03/05/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/524,002	Applicant(s) DEMELLIER ET AL.	
	Examiner KEEGAN GUMBS	Art Unit 4128	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,9,10,12-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) 5-8,11,15 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,9,10,12-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/8/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species 1 (Figures 9-12) in the reply filed on 2/4/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant in the reply indicates that claims 1-4, 9, 10, 12-14, and 16 are readable on the elected species. Accordingly, claims 5-8, 11, 15, and 17 are withdrawn from further consideration as being drawn to the non-elected inventions.

Drawings

2. The drawings are objected to because page 2, line 7 of the specification recites: "the slide is in the raised and lowered positions, respectively." This is not shown in the figure to which the description refers. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after

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the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "height (H1)". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: page 5, line 1 of the specification recites "in am optimum way". The examiner assumes this is a minor informality and should read, "in an optimum way".

Appropriate correction is required.

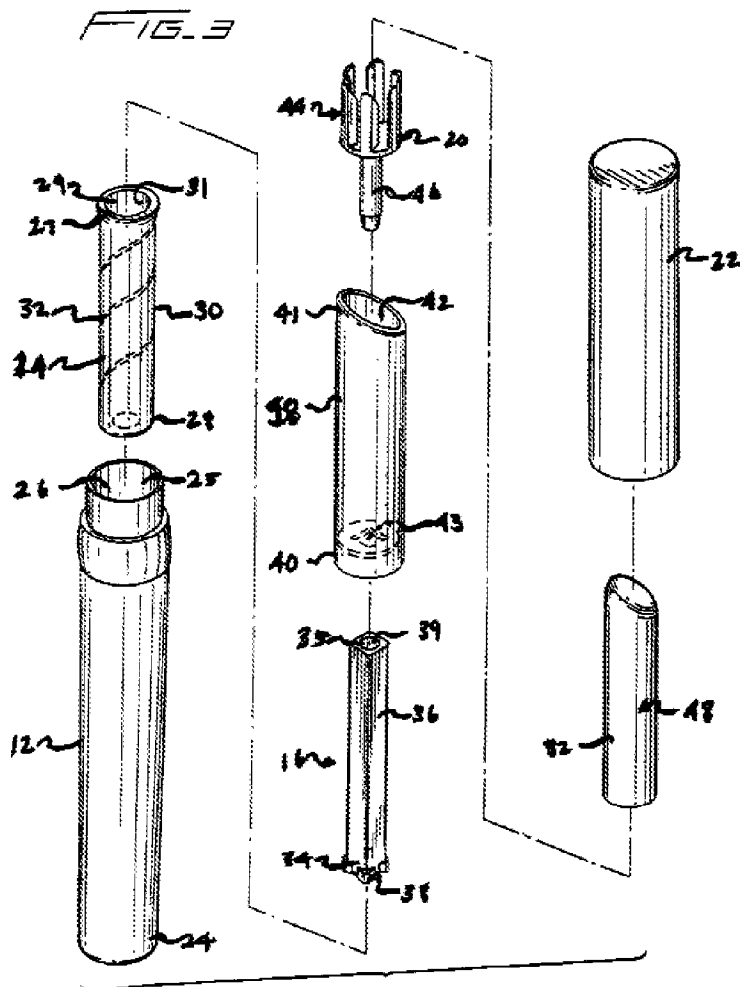
Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-4 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bow et al. (US 6,293,721 B1).



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Regarding claim 1, the Bow reference discloses a cosmetic dispenser or rotating case comprising a base (12) mounted movably in axial rotation around a tubular body (18) in an interior of which is mounted a movable slide (20) which receives a product to be protected, the slide including a ballast (46) which augments the slides mass (*see the figure above*).

Regarding claim 2, the Bow reference discloses that the ballast is joined with the slide (*see the figure above*).

Regarding claim 3, the Bow reference discloses that the ballast is joined with an end of the slide which is situated under a space (44) designed to hold the protected product (*see the figure above*).

Regarding claim 4, the Bow reference discloses that the ballast is made of a high density material forming a single piece with the slide (*see the figure above and col. 5, lines 61-67*).

Regarding claim 12, the Bow reference discloses that the rotating case further includes a closing top (22) indirectly removably attached to a free end (41) of the tubular body.

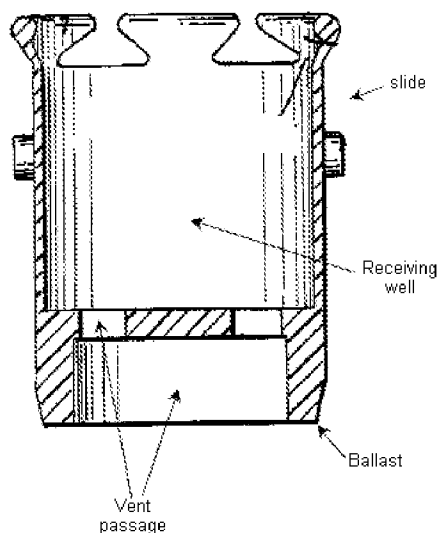
Regarding claim 13, the Bow reference discloses a lipstick or a lip balm container comprising a tubular body (18); a base (12), rotatably mounted to a lower end (40) of the tubular body; a slide (20) movably received in the tubular body, the slide defining a lipstick or lip balm receiving well (44) in an upper end and carrying a ballast (46) in a lower end; and a slide advancing mechanism (14) interconnected with the slide and the base such that the rotation of the base causes the slide to advance axially toward an

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upper end (41) of the tubular body and opposite rotation of the base retracts the slide to the lower end of the tubular body (*see the figure above, col. 3, lines 45-67, and col. 4, lines 1-7*).

7. Claims 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheffler (US 5,988,917).

Regarding claim 13, the Sheffler reference discloses a lipstick or a lip balm container comprising a tubular body (52); a base (14), rotatably mounted to a lower end of the tubular body (see Fig. 2); a slide (98) movably received in the tubular body, the slide defining a lipstick or lip balm receiving well in an upper end and carrying a ballast in a lower end (*see the annotated figure below*); and a slide advancing mechanism (54, 56, 58, 100) interconnected with the slide and the base such that the rotation of the base causes the slide to advance axially toward an upper end of the tubular body and opposite rotation of the base retracts the slide to the lower end of the tubular body (*see col. 7, lines 66-67 and col. 8, lines 1-13*).



Regarding claim 16, the Sheffler reference discloses the receiving well which includes a vent passage extending from the lipstick or lip balm receiving well through the ballast to facilitate removal of air displaced by insertion of a lip stick or lip balm element into the lipstick or lip balm receiving well (*see the annotated figure above, col. 5, lines 4-11 and col. 8, lines 45-56*).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

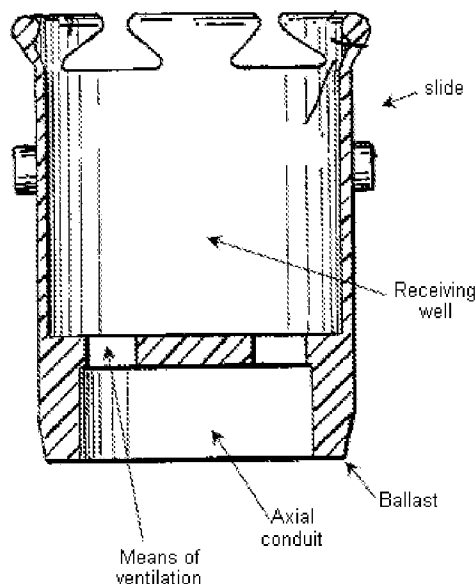
9. Claims 9, 10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bow, as discussed supra, in view of Sheffler et al. (US 5,988,917).

Regarding claim 14, the Bow reference discloses that the ballast extends over at least a lower half of the slide. If the slide, of the Bow reference, was split into two halves, an upper and lower half, the ballast would extend over at least a lower half of the slide since the ballast makes up the lowest end of the lower half, thus the ballast of the Bow reference does extend over at least a lower half of the slide.

Regarding claims 9 and 10, the Bow reference discloses the rotating case as claimed. The Bow reference does not disclose the case including a means for ventilation as claimed. Attention, however, directed to the Sheffler reference which discloses another cosmetic dispenser or rotating case having a slide which includes a means of ventilation for venting the lower end of the a product when the product is

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inserted into the slide, further including at least one axial conduit (*see the annotated figure below*) communicating with the space designed to receive the product and also with the space situated below the slide for venting the lower end of a product when the product is inserted into the slide (*see col. 5, lines 4-11 and col.8, lines 45-56*). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the slide of the Bow reference to include a means of ventilation for venting the lower end of the a product when the product is inserted into the slide, further including at least one axial conduit communicating with the space designed to receive the product and also with the space situated below the slide for venting the lower end of a product when the product is inserted into the slide in view of the Sheffler reference. Such modification would permit air to bleed through the bottom of the sleeve when a product is inserted into the sleeve for easy insertion of the product.



Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Seneco et al. patent (US 6,035,866), Gueret patent (US 4,884,912), Oses patent (US 4,666,324) which disclose cosmetic applicators which contains ballast-type structures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEEGAN GUMBS whose telephone number is (571)270-5608. The examiner can normally be reached on Monday through Friday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoa Huynh can be reached on 5712724888. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Khoa D. Huynh/

Supervisory Patent Examiner, Art Unit 4128